

LYNCH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. : CONSOLIDATED
SECURITIES LITIGATION : C.A. NO. 99-371 KAJ

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ORAL DEPOSITION OF ED J. LYNCH, CPA

Tuesday, August 1, 2006

The oral deposition of ED J. LYNCH, CPA, was held at the law offices of Akin Gump Strauss Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas, from 9:37 a.m. to 12:41 p.m., before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter, and Certified LiveNote Reporter.

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1 APPEARANCES: 2 NEIL F. MARA, ESQUIRE 3 BERGER & MONTAGUE, PC 4 1622 Locust Street 5 Philadelphia, Pennsylvania 19103 6 (215.875.3000) 7 -- Representing the Plaintiffs 8 9 PAUL R. BESSETTE, ESQUIRE 10 AKIN GUMP STRAUSS HAUER & FELD, LLP 11 300 West 6th Street, Suite 2100 12 Austin, Texas 78701-3911 13 (512.499.6200) 14 -- Representing Adams Golf, Inc. 15 16 THEODORE J. McEVOY, ESQUIRE 17 SIMPSON THACHER & BARTLETT, LLP 18 425 Lexington Avenue 19 New York, New York 10017-3954 20 (212.455.2831) 21 -- Representing the Underwriter Defendants 22 23 24	1 PROCEEDINGS 2 (On the record at 9:37 a.m.) 3 ED J. LYNCH, CPA, 4 the witness hereinbefore named, being of lawful 5 age and being first duly cautioned and sworn in 6 the above cause, testified on his oath as follows: 7 EXAMINATION 8 BY MR. MARA: 9 Q Good morning, Mr. Lynch. My name is 10 Neil Mara. I am an attorney with Berger & 11 Montague in Philadelphia. I am one of the 12 attorneys representing the plaintiffs in the Adams 13 Golf Securities Litigation. Thank you for coming 14 in this morning. We appreciate your time. 15 I know from reviewing the 16 materials that you submitted that you've been 17 deposed on numerous occasions before this? 18 A Yes. 19 Q Okay. So you're well familiar with 20 the format of a deposition. If you need a break, 21 let me know. 22 A Okay. 23 Q We'll stop. I'm more than happy to 24 do that.
1 INDEX 2 Appearances 2 3 Stipulations -- 4 5 ED J. LYNCH 6 Examination by Mr. Mara 4 7 Corrigendum 116 8 Reporter's Certificate 117 9 10 EXHIBITS 11 NUMBER DESCRIPTION PAGE 12 302 Expert Report of Ed J. Lynch, CPA 13 July 14, 2006 8 14 15 16 17 18 19 20 21 22 23 24	Page 3
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	1 And you know that you need to 2 respond verbally and not with nods of your head 3 because what you're saying is being recorded. 4 Is there any reason why you 5 can't testify to the best of your ability this 6 morning? 7 A I cannot think of any. 8 Q Okay. No medications that would 9 impede your reasoning? 10 A No. 11 Q Okay. As I said prior to going on 12 the record, we'll attempt to take the least amount 13 of your time that we can today. And in light of 14 that, having reviewed your resume, my questions of 15 your qualifications are very few. 16 Have you ever been 17 disqualified as an expert witness? 18 A No. 19 Q Okay. Have you offered testimony in 20 the past on behalf of Akin Gump? 21 A I have been hired by Akin Gump and a 22 client in the past, yes. 23 Q My question was inartful. 24 Have you been retained -- how

2 (Pages 2 to 5)

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<p>1 many times have you been retained by Akin Gump 2 provide expert testimony or consulting expert 3 advice?</p> <p>4 A Three or -- three or four or five, 5 somewhere in there.</p> <p>6 Q And those have been -- have those 7 been recent retentions, or has this been a 8 long-standing relationship you've had with the 9 firm?</p> <p>10 A It's been over a number of years. I 11 think the first time was in '95 or '6.</p> <p>12 Q And it's continued, obviously, to the 13 present day?</p> <p>14 A Sporadically, obviously, if only 15 three to five times in 10 years, 11 years.</p> <p>16 Q Sure. Sure.</p> <p>17 Have you provided expert 18 testimony in securities class actions --</p> <p>19 A Yes.</p> <p>20 Q -- in the past?</p> <p>21 How many times have you done 22 that, if you're able to recall?</p> <p>23 A I think three or four or five times, 24 somewhere in there.</p>	<p>1 analysis.</p> <p>2 Q Sure. I know you're providing 3 ballpark estimates. I'm not -- I'm not looking to 4 hold you to an exact figure. Thanks.</p> <p>5 You've also -- have you 6 testified at trial?</p> <p>7 MR. BESSETTE. As an expert?</p> <p>8 Q (By Mr. Mara) Yes, as an expert. 9 Excuse me.</p> <p>10 A Yes.</p> <p>11 Q And you've testified in arbitration 12 hearings as an expert?</p> <p>13 A Yes.</p> <p>14 Q Well, moving to your report, then, 15 which I will mark as Exhibit 302 in an effort to 16 jump beyond the fact witness exhibits.</p> <p>17 (Deposition Exhibit 302 18 was marked.)</p> <p>19 Q (By Mr. Mara) And I see you have 20 your report in front of you, Mr. Lynch. I'm just 21 going to very simply walk you through the report. 22 I have a number of questions, and I'll pretty much 23 jump from paragraph to paragraph.</p> <p>24 So if I may, I will invite</p>
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<p>1 Q Have you testified on behalf of both 2 defendants and plaintiffs when providing expert 3 testimony?</p> <p>4 A Yes.</p> <p>5 Q Have you testified for plaintiffs in 6 securities class actions?</p> <p>7 A I can't remember one in a securities 8 class-action case.</p> <p>9 Q What percentage of your expert 10 testimony or consultation as a whole has been on 11 behalf of plaintiffs?</p> <p>12 A I don't know a precise number, as 13 I've not kept track from the first time I've ever 14 testified till today, so I just -- I don't know an 15 exact percentage.</p> <p>16 Q Can you estimate? Is it -- is it a 17 50/50 thing, or is it tilted heavily in one 18 direction or another?</p> <p>19 A I don't think it's 50/50. I think if 20 I were to guesstimate a number, it would be a 21 third plaintiffs, two-thirds defendants; however, 22 you know, if you went back and looked at every 23 one, it could be as low as 25 percent for 24 plaintiffs. I just -- I haven't done that</p>	<p>1 your attention to Paragraph 16.</p> <p>2 A Okay.</p> <p>3 Q It's under the heading Facts and 4 Circumstances Underlying My Opinions, and I just 5 have some general questions.</p> <p>6 MR. MARA: Ted, are you with 7 us?</p> <p>8 MR. McEVOY: Yes, I am.</p> <p>9 MR. MARA: Okay.</p> <p>10 Q (By Mr. Mara) If you look at the 11 last sentence of that paragraph, it says -- I'd 12 invite you to re-read the whole paragraph, but my 13 question is just on the last sentence, quote: 14 Such estimates have approximated actual costs 15 incurred.</p> <p>16 What's the meaning of the 17 term "approximated" in that sentence?</p> <p>18 A Well, I -- I didn't write the 19 sentence. I quoted the sentence from someone 20 else.</p> <p>21 Q Sure.</p> <p>22 A So the way I read the 23 sentence, "approximated," in my mind is like the 24 word "estimated" to an accountant.</p>

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<p style="text-align: right;">Page 102</p> <p>1 goof-up, that he was terminated not because of an 2 honest goof-up, does that change your testimony 3 that no final determination was made regarding the 4 allegations? That's my question.</p> <p>5 A Well, what I'm referencing in the "no 6 final determination" is I believe the memo in 7 Mr. Greaney's personnel file. And so if you say 8 that there is testimony that contradicts that, 9 obviously I would look at that and -- and 10 determine if one document controverted by 11 testimony should cause me not to have an opinion 12 as to no final determination, especially since I 13 even recall seeing a resignation letter when, in 14 fact, you're saying he was terminated.</p> <p>15 When I have terminated people, 16 they did not give me a resignation letter. I 17 terminated them. So there are several 18 contravening facts here on the table.</p> <p>19 Q We can agree that personnel files are 20 often sanitized?</p> <p>21 MR. McEVOY: Object to form.</p> <p>22 A I -- I am not aware of any personnel 23 files I've ever been associated with being 24 sanitized, so you know, it's a little hard for me</p>	<p style="text-align: right;">Page 104</p> <p>1 boomerang on you rather quickly as a return, and 2 the company was tracking returns in a diligent 3 manner.</p> <p>4 So of those things mentioned 5 in Mr. Adams' memo, as an accountant, I think the 6 one that I would be advising the company to drill 7 down on is the consignment sales because that is a 8 relatively difficult area to investigate and 9 connect.</p> <p>10 Q And drilling down, is it fair to say, 11 that can take whatever form it needs to take for 12 that company to do a proper investigation, or is 13 there some standard investigatory -- investigatory 14 practice that a company would execute to, quote, 15 drill down?</p> <p>16 A I don't think that there is a 17 standard -- well-defined standard for looking for 18 consigned sales -- consignment sales. What one 19 does is interview a number of people and look at 20 facts and circumstances around sales. And in 21 essence, a number of, quote, interviews have been 22 done through deposition testimony in this case, of 23 people in the sales department, as well as of 24 Mr. Adams himself.</p>
<p style="text-align: right;">Page 103</p> <p>1 to agree that in general personnel files are 2 sanitized when I personally have never been 3 involved in sanitizing a personnel file.</p> <p>4 MR. MARA: Just one second, if 5 I may.</p> <p>6 Q (By Mr. Mara) I've represented in my 7 questions previously that your report seems to me, 8 as the reader, to favor the deposition testimony 9 over the memo written in August of 1998, and I -- 10 you can accept that or reject it.</p> <p>11 But my question is: If you 12 favored the memo written in 1998, which, as you'll 13 recall, listed several issues that Mr. Adams had 14 with the inside sales department, what obligation 15 or duty would that place on the company to 16 investigate those problems?</p> <p>17 A If one assumed that there were, for 18 instance, consignment sales being accounted for as 19 sales, then one should generally get to the bottom 20 of which sales were real sales and which sales 21 should be accounted for as consignment sales.</p> <p>22 When you look at the issue of 23 double shipments as they were described in the 24 memo, one would expect a double shipment to</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. BESSETTE: I found the 2 testimony. I can put it in the record.</p> <p>3 MR. MARA: You know, save it 4 for cross, and we'll just deal --</p> <p>5 MR. BESSETTE: Sure.</p> <p>6 MR. MARA: -- with it that 7 way.</p> <p>8 Q (By Mr. Mara) Do you know, are you 9 familiar with -- we're really getting to the end. 10 Are you familiar with WDC 11 Mackenzie? Have you ever heard that name before 12 this morning, before I just said it?</p> <p>13 A It does not ring a bell.</p> <p>14 Q They -- for the sake of clarity, they 15 were a Canadian distributor for the Adams Golf 16 products. They had exclusive distribution rights 17 in Canada, which is simply background.</p> <p>18 Do you know if you saw any 19 KPMG confirmations from WDC Mackenzie? Not "do 20 you know" Did you see any confirmations?</p> <p>21 A I don't recall that name, but I 22 looked at a number of confirmations. I just can't 23 tell you all of the confirmations I looked at.</p> <p>24 Q And are you able to recall how many</p>

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Friday, August 11, 2006

Oral deposition of R. ALAN MILLER, taken
pursuant to notice, was held at the offices of AKIN,
GUMP, STRAUSS, HAUER AND FELD, LLP, 590 Madison
Avenue, 18th Floor, New York, New York 10022-2524
commencing at 8:50 a.m. on the above date, before Beth
A. Barkocy, Certified Shorthand Reporter and Notary
Public.

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R. ALAN MILLER

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<p>1 A. There was a memoranda prepared 2 either by corporate finance or equity capital market 3 person at Lehman. I'm not sure it was clearly 4 identified who it was. I think it was one of those 5 two groups, communicating to Adams to prepare for an 6 investor conference call indicating concerns being 7 expressed by customers about gray marketing and 8 expecting to have to answer questions about that topic 9 on the conference call.</p> <p>10 Q. Is it your recollection that that 11 document was reflecting actual concerns by investors?</p> <p>12 A. I don't remember the wording of the 13 document specifically enough, but I remember having 14 the impression that the author expected the topic to 15 come up at the conference call and that, for some 16 reason, I remember thinking that was based on investor 17 contact, and it may have, to some degree, reflected my 18 understanding of the equity capital market person's 19 function at Lehman with respect to monitoring the 20 price of underwritings and customer activity after the 21 IPO and that kind of stuff.</p> <p>22 Q. (Indicating.)</p> <p>23 I just handed you Exhibit 177. Is 24 that the document you're referring to?</p> <p>25 A. Yeah, I believe this is.</p>	<p>1 Costco?</p> <p>2 A. No, I don't. I don't recall that.</p> <p>3 Q. You don't recall whether they did or 4 did not or you just don't recall at all?</p> <p>5 A. I don't recall whether they did or 6 didn't.</p> <p>7 Q. These concerns are in boxes, 8 Orlimar, recent performance, Callaway, new products, 9 domestic sales, and discounting. Would it surprise 10 you to learn that of all of those concerns, the only 11 one not expressed on the conference call was gray 12 marketing or Costco or discounting?</p> <p>13 MR. LEWIS: Objection to form and 14 foundation.</p> <p>15 THE WITNESS: No, it wouldn't 16 surprise me one way or the other. I just 17 don't recall whether it occurred or not.</p> <p>18 BY MR. BESSETTE:</p> <p>19 Q. Did you review the conference call 20 transcript as part of your work in this case to see if 21 investors had expressed concern in August on the 22 conference call about discounting or gray marketing?</p> <p>23 A. I don't believe I reviewed the 24 conference call transcript.</p> <p>25 Q. Did you not think it was important</p>
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<p>1 Q. This document is from Patrick 2 Walravens at Lehman. Do you know who that is?</p> <p>3 A. Yeah, he was a corporate finance 4 person.</p> <p>5 Q. Was he involved in the underwriting?</p> <p>6 A. Yes, he was the -- trying to 7 remember his title. I think he was the associate on 8 the underwriting, if I remember correctly.</p> <p>9 Q. The third page says concerns to 10 expect from investors. Is there something on this 11 page that leads you to believe that these are concerns 12 actually expressed by investors to Lehman?</p> <p>13 A. Not other than the heading 14 suggesting that investors are likely to have these 15 concerns, at least with respect to this document. I 16 think this document clearly says what it says.</p> <p>17 Q. Do you know whether investors -- 18 actually, this is for the Adams Golf conference call. 19 This is dated July 29. Do you know the date of the 20 conference call being referred to?</p> <p>21 A. I think it was early August. I 22 don't remember exactly.</p> <p>23 Q. Do you know whether there were any 24 concerns expressed on the conference call from 25 investors about discounting or gray marketing or</p>	<p>1 to do that?</p> <p>2 A. No, I didn't.</p> <p>3 Q. Why?</p> <p>4 A. Because given all the other 5 indicators we're talking about and given the 6 identification of the issue in this memo, it indicated 7 knowledge of the issue, certainly at Lehman, and it 8 was identified by Lehman as a concern to expect from 9 investors. I don't know why they would have had some 10 thought it was a concern to expect from investors 11 unless they thought exactly that.</p> <p>12 Q. What's more important to your 13 analysis, what Lehman thought or what, actually, 14 investors thought?</p> <p>15 MR. LEWIS: Objection to form and 16 foundation. Which analysis of what?</p> <p>17 THE WITNESS: (No response.)</p> <p>18 BY MR. BESSETTE:</p> <p>19 Q. Turn to Paragraph 22 of your 20 rebuttal report, if you would, please.</p> <p>22 A. (Witness complies.)</p> <p>23 Q. In Paragraph 22A, you discuss Costco 24 national purchase orders for the purchase of Adams 25 Golf clubs, right?</p>

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